

General instructions

Filing requirements

A fiduciary for a resident estate or trust, or a fiduciary for a nonresident estate or trust that derives income from North Dakota sources, must file Form 38 if required to file a federal fiduciary income tax return. This includes a grantor trust that, in lieu of filing Federal Form 1041, elects to report using an alternative method allowed under federal income tax regulations.

Resident estate or trust. A fiduciary for a resident estate or trust is generally subject to the same law provisions which apply to a resident individual. The entire income (loss) of a resident estate or trust must be reported to North Dakota. An estate or trust is considered a North Dakota resident estate or trust if it has a relationship to North Dakota that is sufficient to create nexus for income tax purposes. See North Dakota Administrative Code § 81-03-02.1-04 for examples of what constitutes nexus.

Nonresident estate or trust. A fiduciary for a nonresident estate or trust is generally subject to the same law provisions that apply to a nonresident individual. Only the portion of the nonresident estate's or trust's income (loss) derived from North Dakota sources is subject to North Dakota income tax.

Employer identification number. For North Dakota purposes, use the same employer identification number used on the Federal Form 1041.

Signature. The fiduciary or an authorized representative of the fiduciary must sign the return. If a person other than the fiduciary is paid to prepare the return, the paid preparer must also sign the return.

Which schedule to use. Either Schedule 1 (Main Method) or Schedule 2 (Optional Method) may be used to calculate the tax. The two methods will yield different results, so it is recommended that both methods be compared before choosing one. Use the method showing the lowest tax.

When to file and pay

A return for the calendar year 2005 must be filed on or before April 15, 2006. A return filed on a fiscal year basis must be filed on or before the fifteenth day of the fourth month following the end of the fiscal year.

If the due date falls on a Saturday, Sunday or legal holiday, the return is due on the next business day. Tax due on the return must be paid in full with the return.

Extension of time to file. If an extension of time to file Federal Form 1041 is obtained, it will be recognized by North Dakota. Or, if a federal extension isn't needed, a separate North Dakota extension may be applied for using Form 101. The North Dakota extension is not automatic—there must be good cause to request one. Form 101 must be filed on or before the due date of Form 38. At the time Form 38 is filed, check the extension box at the top of Form 38 and attach a copy of the federal extension form or an approved Form 101, whichever applies. If there is tax due on the return, extension interest is charged at the rate of 12% per year from the original due date of the return to the earlier of the extended due date or the date the tax due is paid.

Extension payment. To avoid paying extension interest, the expected tax due may be prepaid. To do so, submit a check or money order with a 2005 Form 401-EXT by the regular due date of the tax.

Where to file and pay

Form 38 must be filed with the Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, North Dakota 58505-0599. Make the check or money order payable to "ND State Tax Commissioner."

Penalty and interest. By law, penalty and interest must be charged on a late payment of tax. The penalty is 5% of the late payment (with a minimum of \$5.00). In addition, interest on the late payment is charged at the rate of 1% per month or a fraction of a month (except for the month in which the tax was due) until the tax due is paid.

Estimated income tax

A fiduciary may have to pay estimated North Dakota income tax for the 2006 tax year if both of the following apply:

1. The fiduciary is required to pay estimated federal income tax for 2006.
2. The fiduciary's net tax liability for 2005, and the estimated balance due (after withholding but before

estimated tax is subtracted) for 2006, is \$500 or more. *(If no return is required to be filed for 2005, no estimated tax payments are required for 2006.)*

For more information, obtain the 2006 North Dakota Form 401-ES.

Beneficiaries

A beneficiary of an estate or trust required to file Form 38 may be required to file a North Dakota income tax return to report the income (loss) distributed or distributable to the beneficiary.

Resident individual. A resident individual must report to North Dakota his or her entire share of income (loss) from any estate or trust, as determined for federal income tax purposes.

Nonresident individual. A nonresident individual must report to North Dakota the portion of the income (loss) from an estate or trust that is derived from North Dakota sources. This includes the same kinds of income (losses) that would be reportable to North Dakota had the nonresident individual derived them directly from the North Dakota sources.

Other entities. If a beneficiary is a corporation, partnership, or other type of entity, see the instructions to the applicable North Dakota income tax return for filing and reporting requirements.

Composite filing

A composite filing method is allowed as an alternative filing method for the nonresident individual beneficiaries of a trust. Under this method, one individual income tax return, referred to as a "composite return," may be filed by the trust fiduciary on behalf of two or more eligible beneficiaries. For details, obtain the *Income tax guideline: Composite filing method*.

Income tax withholding

Starting with taxable years beginning on or after January 1, 2006, a fiduciary for a trust must withhold income tax from the amount of income distributable to a nonresident individual beneficiary. For more information as well as exceptions to this requirement, see **Pass-Through Entity Withholding** under **What's New!** at www.nd.gov/tax.

Information returns

Every fiduciary having a requirement to file a Federal Form 1099 or a Federal Form W-2 must also file one with North Dakota. For details, obtain the *Income Tax Guideline: Information Returns*.

Amended returns

Check the "Amended return" box at the top of Form 38 if it is being filed to correct a previously filed Form 38 for the same tax year. If an amended Federal Form 1041 is filed or the Internal Revenue Service makes changes to Federal Form 1041, an amended Form 38 must be filed within ninety days after filing the amended federal return or within ninety days after the final determination of the IRS changes.

Need help?

E-mail: individualtax@state.nd.us

Web site: www.nd.gov/tax

Phone*: (701) 328-3450

**If speech or hearing impaired, call Relay North Dakota at 1-800-366-6888 and ask for 701-328-3450.*

Specific instructions

Steps to completing Form 38

1. Complete the top portion of Form 38 (name, address, FEIN, etc.).
2. Complete either Schedule 1 (Main Method) or Schedule 2 (Optional Method). See "Which schedule to use" under **Filing requirements** on page 1 of these instructions. **Do not complete both schedules on the return filed.**
3. Complete lines 10 through 16 on page 1 of Form 38.
4. If the estate or trust has one or more beneficiaries, complete Schedule 3 on page 2 of Form 38.

Specific line instructions for Schedule 1 (Main Method)

(Page 1, Form 38)

Electing small business trust: *If an electing small business trust (ESBT), include the separate S corporation items in the amounts entered on lines 1 and 2 of Schedule 1, Form 38.*

Line 3

The following items must be entered on this line to the extent taxable to the fiduciary:

- Taxable portion of a lump-sum distribution from Federal Form 4972, line 6 plus line 10. However, do not make an entry on this line if a nonresident estate or trust.
- Loss from a pass-through entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Pass-Through Entity Subject To N.D.C.C. ch. 57-35.3*. **Attach a copy of the statement received from the entity.**

Line 5

The following items may be entered on this line, but only to the extent the income is included in the amount on line 2:

- Interest income from U.S. obligations and other securities that is exempted from state income tax by federal statute. Include the portion of dividend income from a mutual fund that is attributable to interest from similar types of securities. Unless already identified on the federal return, attach a statement specifically identifying the securities. For a mutual fund, identify the fund, qualifying securities held by the fund, and the percentage of interest income from qualifying securities.
- **Changed for 2005!** Thirty percent of the excess of a net long-term capital gain over a net short-term capital loss. **However, in the case of a nonresident estate or trust, this only applies to a net long-term capital gain based on gains and losses reportable to North Dakota.**
- Income earned by a Native American while living and working on the Indian reservation where enrolled.
- Taxable part of payments from the U.S. Railroad Retirement Board. **Attach a copy of Form RRB-1099 or RRB-1099-R (or both, if applicable).**
- Income from a pass-through entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Pass-Through Entity Subject To N.D.C.C. ch. 57-35.3*. **Attach a copy of the statement received from the entity.**

- Income exempted under N.D.C.C. ch. 40-63 (Renaissance Zone Act). **Attach Schedule RZ.**
- Income exempted under N.D.C.C. ch. 40-57.1 (new or expanding business income exemption). **Attach statement showing calculation of exempt income.**
- **Changed for 2005!** Compensation received by a National Guard or U.S. armed forces member mobilized for federal active duty service under Title 10 of United States Code. Compensation received for annual training, basic military training, professional military education, or volunteer active duty for which no mobilization orders were issued is not eligible.
- Compensation received by a nonresident individual for active duty in the U.S. armed forces.

Line 8a

Nonresident estate or trust only

If a nonresident estate or trust, enter the portion of the amount on line 1 that is derived from North Dakota sources. Income from North Dakota sources includes income from tangible property in North Dakota, such as rents, mineral property royalties, and gains from the sale or exchange of the property; income from a trade or business carried on in North Dakota; and other types of income that are sourced in North Dakota. Do not include interest, dividends, or gain from the sale or exchange of intangible property.

Specific line instructions for Schedule 2 (Optional Method)

(Page 2, Form 38)

Electing small business trust: *If an electing small business trust (ESBT), include the separate S corporation items and the separately computed federal income tax in the amounts entered on lines 1 and 8, respectively, of Schedule 2, Form 38.*

Line 2

Resident estate or trust—A fiduciary for a resident estate or trust must enter the following items on this line if allocated to, or retained by, the fiduciary:

- Except for North Dakota and its political subdivisions, interest from state and local government obligations that is exempt from federal income tax. Include the portion of dividends received from a mutual fund that is attributable to the fund's investment in the same kinds of obligations.
- State and local income taxes deducted in determining federal taxable income.
- Amount from Federal Form 4972, line 6 plus line 10.

All estates and trusts—A fiduciary for a resident or nonresident estate or trust must enter on this line the amount of a loss from a pass-through entity subject to North Dakota's financial institution tax if the loss is allocated to, or retained by, the fiduciary. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Pass-Through Entity Subject To N.D.C.C. ch. 57-35.3*. **Attach a copy of the statement received from the entity.**

Line 4

Resident estate or trust—A fiduciary for a resident estate or trust may deduct the following items if they are allocated to, or retained by, the fiduciary and included on line 1:

- Interest income, up to a maximum of \$300, received from a North Dakota financial institution.
- Interest income from U.S. obligations and other securities that is exempted from state income tax by federal statute. Include the portion of dividend income from a mutual fund that is attributable to the fund's investment in similar types of securities. Unless already identified on the federal return, attach a statement specifically identifying the securities. For a mutual fund, identify the fund, qualifying securities held by the fund, and the percentage of income from qualifying securities.
- Allowable deductions for the sale or lease of land to a qualifying beginning farmer, or for the sale or lease of a revenue-producing enterprise to a qualifying beginning entrepreneur. For more information, contact the Office of State Tax Commissioner to obtain the applicable guideline and forms. **Attach a copy of the *Beginning Farmer Statement* or *Beginning Businessman Statement*.**

- Amount of investment, up to a maximum of \$5,000, in a venture capital corporation under N.D.C.C. ch. 10-30.1. **Attach a copy of the *Venture Capital Corporation Investment Reporting Form*.**
- Income earned by a Native American while living and working on the Indian reservation where enrolled.
- Taxable part of payments from the U.S. Railroad Retirement Board. **Attach a copy of Form RRB-1099 or RRB-1099-R (or both, if applicable).**
- Gain from sale of property due to the exercise of eminent domain.
- Income exempted under N.D.C.C. ch. 40-57.1 (new and expanding business exemption). **Attach statement showing calculation of exempt income.**
- Income exempted under N.D.C.C. ch. 40-63 (Renaissance Zone Act). **Attach Schedule RZ.**
- Amount of income from a pass-through entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Pass-Through Entity Subject To N.D.C.C. ch. 57-35.3*. **Attach a copy of the statement received from the entity.**
- **Changed for 2005!** Compensation received by a National Guard or U.S. armed forces member mobilized for federal active duty service under Title 10 of the United States Code. Compensation received for annual training, basic military training, professional military education, or volunteer active duty for which no mobilization orders were issued is not eligible.

Nonresident estate or trust—A fiduciary for a nonresident estate or trust may deduct the same items listed above for a resident estate or trust if the income is included on line 1 and is reportable to North Dakota by the fiduciary.

Line 5

Nonresident estate or trust only

If a nonresident estate or trust, enter on this line the portion of the fiduciary's federal taxable income that is not subject to tax in North Dakota. In determining this amount, a proportionate share of the itemized deductions (interest, taxes,

fiduciary fees, etc.), estate tax deduction, and exemption amount must be allocated to the non-North Dakota income. **Attach a statement showing the calculation of the net amount entered on this line.**

Line 8

Enter the amount from Federal Form 1041, Schedule G, as follows:

- Line 4.
- **Plus** line 2a (if resident estate or trust).
- **Plus** line 5.
- **Plus** tax from Federal Form 4970 included on line 7.
- **Minus** line 1c.

Line 10

Nonresident estate or trust only

If a nonresident estate or trust, enter on this line the total of line 4 plus the non-North Dakota income (loss) included in the amount on line 9.

Specific line instructions for lines 10 through 16

(Page 1, Form 38)

Complete either Schedule 1 or Schedule 2 before completing these lines.

Line 11

Resident only

If a fiduciary for a resident estate or trust pays income tax to another state, the District of Columbia, or a territory of the United States on income that is also taxed by North Dakota, a limited credit may be allowed. See the instructions to Schedule 4 on page 4.

Line 12

The following additional income tax credits are available to an estate or trust. Unless noted otherwise, a credit is allowed to both Schedule 1 and Schedule 2 filers. For information on any of these credits, contact the Office of State Tax Commissioner.

- Credit for preserving or renovating historical property in a North Dakota renaissance zone. **Attach Schedule RZ.**
- Credit for investing in a renaissance fund organization. **Attach Schedule RZ.**
- Credit for investing in a qualified North Dakota agricultural commodity processing facility. **Attach a copy of the *Ag Commodity Processing Facility Investment Reporting Form*.**

- (Schedule 2 filer only) Credit for making a charitable contribution to a nonprofit private high school (having grades 9 through 12) or a nonprofit private college (including the independent college fund) in North Dakota. **Attach a copy of a receipt or canceled check (front and back).**
- (Schedule 2 filer only) Credit for installing a geothermal, solar, or wind energy device on property owned or leased in North Dakota. **Attach a statement describing the device, a detailed list of costs, and the date the installation was completed.**
- (Schedule 2 filer only) Credit for hiring a developmentally disabled or chronically mentally ill person. **Attach a statement showing the name and social security number of the employee, the date of hire, and the amount of wages paid during the tax year.**
- (Schedule 2 filer only) Credit for investing in a North Dakota venture capital corporation. **Attach a copy of the Venture Capital Corporation Investment Reporting Form.**
- (Schedule 2 filer only) Credit for investing in the North Dakota Small Business Investment Company. **Attach a copy of the SBIC Investment Reporting Form.**
- (Schedule 2 filer only) Credit for investing in a North Dakota certified nonprofit development corporation. **Attach a copy of the Nonprofit Development Corporation Investment Reporting Form.**
- Credit for investing in a qualified North Dakota seed capital business. **Attach a copy of the Qualified Seed Capital Business Investment Reporting Form.**
- **New for 2005!** Credit for blending B5 biodiesel fuel or adding equipment to sell B2 biodiesel fuel. **Attach a statement detailing the calculation of the credit(s).**

Specific line instructions for Schedule 3

(Page 2, Form 38)

Schedule 3 must be completed to identify the beneficiaries of the estate or trust and to show their respective shares of North Dakota income (loss) from the estate or trust. If additional lines are needed, attach a separate statement.

Complete the North Dakota income (loss) column as follows:

- For a North Dakota resident individual, estate, or trust beneficiary, leave blank.
- For all other beneficiaries, enter the portion of the beneficiary's income (loss) from the estate or trust that is derived from North Dakota sources. In the case of a nonresident individual, estate or trust beneficiary, this does not include interest, dividends, pensions, or gain from the disposition of intangible assets.

If a beneficiary's share of income (loss) reported on Schedule 3 includes interest from U.S. obligations or other securities that is exempted from state income tax under federal law (including dividends from a mutual fund attributable to investments by the fund in similar types of securities), a statement on which the specific securities are identified must be attached to Form 38. In the case of dividends from a mutual fund, the statement must show the name of the fund, the identity of the qualifying securities, and the percentage of income derived from the qualifying securities. This statement is not required if the required information is provided on the federal return.

Specific line instructions for Schedule 4

(Page 2, Form 38)

A fiduciary for a resident estate or trust may be eligible for a credit for income tax paid to another state if the fiduciary pays income tax to another state on income that is also taxed by North Dakota. *For this purpose, "state" means any of the other forty-nine U.S. states, the District of Columbia, or a territory of the U.S.*

The credit is available only if an income tax return is filed with the other state on which an income tax is computed and paid. No credit is allowed based on income tax withheld or estimated tax paid.

A copy of the other state's income tax return must be attached to Form 38 to obtain the credit.

Payment of income tax to more than one other state. If income tax is paid to more than one other state, a separate Schedule 4 must be completed for each state.

Line 2

Enter the portion of the fiduciary's income (on line 1 of Schedule 4) that has a source in the other state. Disregard any adjustment to the fiduciary's federal income required by the other state's law.

Line 6

Enter the amount of the income tax less any income tax credits (except withholding and estimated tax) shown on the other state's income tax return.

Line 7

If more than one Schedule 4 is required to be completed, add the separately calculated amounts on line 7 of each Schedule 4 and enter the result on Form 38, page 1, line 11.